

# **VAAC 97-3 January 14, 1998**

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**SUBPART 815.5 - UNSOLICITED PROPOSALS**

**815.504 Advance guidance.**

(a) Any inquiries from a potential offeror of an unsolicited proposal shall be referred to the appropriate VA contact point designated in 815.506(a). The contact point will determine the nature of the potential proposal and determine what technical/professional disciplines need be consulted to determine the VA need for such a proposal and the likelihood that a formal proposal would be favorably reviewed. In consultation with such technical/professional offices, the VA contact point will inform the potential proposer of any additional information required to provide advance guidance as well as the information specified in FAR 15.504.

(b) The VA contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

**815.506 Department procedures.**

(a) The Chief, Acquisition and Materiel Management Service, servicing the field facility and the Director, VA Marketing Center, Hines, Illinois, are designated as the VA contact points for unsolicited proposals submitted at the facility level. The Deputy Assistant Secretary for Acquisition and Materiel Management is designated as the VA contact point for all unsolicited proposals received at VA Central Office.

(b) Each unsolicited proposal received by VA will be submitted to the appropriate contact point.

(c) The VA contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.505. If required information is not submitted, the VA contact point will:

(1) determine if advance guidance as specified in FAR 15.504 is necessary,

(2) request that the offeror provide necessary information if it is determined that the formal evaluation prescribed in FAR 15.506-2 is appropriate; and

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(3) establish an estimated due date for completion of the review process.

**815.506-1 Receipt and initial review.**

(a) When the VA contact point determines that a comprehensive evaluation is to be undertaken (i.e., the proposal complies with the requirements in FAR 15.506-1(a) and is related to the mission of VA), the offeror will be contacted to ensure that all data that should be restricted in accordance with FAR 15.509 has been identified.

(b) The VA contact point will maintain a log of all unsolicited proposals which will be evaluated. The log will indicate:

(1) the date the proposal was received;

(2) the date that the unsolicited proposal has been determined to warrant a comprehensive evaluation;

(3) a description of the proposal;

(4) the offices requested to evaluate the proposal and the date such offices are requested to return their evaluations;

(5) the date the reviewing offices finalize their respective evaluation;  
and

(6) the final disposition of the proposal.

(c) Each office which is assigned responsibility for reviewing an unsolicited proposal will be advised of the need to evaluate the proposal against the criteria set forth in FAR 15.507(a)(1) through (3), i.e., is the proposal available to the Government without restriction from another source, does it closely resemble a pending competitive acquisition, is the proposal lacking in demonstrated innovation or uniqueness? If the reviewers conclude in the affirmative as to any one of these questions, the VA contact point shall be advised and return the proposal to the proposer.

(d) With regard to an unsolicited proposal being processed at a field facility, if the reviewing offices conclude that the unsolicited proposal should be accepted and provide the justification and certification required by FAR 15.507, the VA contact point will obtain the prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (95) prior to proceeding with negotiation. In order to obtain the approval, the

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VA contact point will submit all necessary documentation supporting the noncompetitive negotiation including any justification and approval required by FAR subpart 6.3 and results of any synopsis required by FAR subpart 5.2. The Deputy Assistant Secretary for Acquisition and Materiel Management will coordinate the proposal with the cognizant VA Central Office program official(s) and furnish the VA contact point with the final decision.

(e) All copies of the unsolicited proposal will be controlled by the contact point by numbering each copy. If a reviewing office requires additional copies, the reviewing office will obtain approval of the VA contact point prior to duplication, numbering the copies as specified by the contact point. All copies will be returned to the VA contact point once review is completed.

### **SUBPART 815.6 - SOURCE SELECTION**

#### **815.607 Disclosure of mistakes before award.**

The Head of the Contracting Activity (as defined in 802.1) is delegated authority to permit withdrawal or correction of mistakes in proposals before award consistent with FAR 15.607. In accordance with FAR 15.607(c)(3), the HCA must obtain legal review prior to permitting correction of any mistake.

### **SUBPART 815.8 - PRICE NEGOTIATION**

#### **:::815.804-2 Requiring certified cost or pricing data.**

Under the circumstances prescribed in FAR 15.804-2(a), the contracting officer will require the prospective contractor to submit and to have any prospective subcontractor submit to the prime contractor, cost or pricing data and to certify to its accuracy and completeness. This data will be submitted by the contractor on SF 1411, Contract Pricing Proposal Cover Sheet, and will be used by the contracting officer in the evaluation of the offer and in the negotiation of the contract price or contract modification. The cost or pricing data is required to determine the reasonableness of the proposed price where such price is based on the cost of the proposed work. It is not required when the contracting officer determines that prices are based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation. To receive an exemption from the requirement for submission or certification of cost or pricing data when prices are

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based on established catalog or market prices or prices set by law or regulations, the contractor must ordinarily claim it on SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when required by FAR subpart 15.804-3(e).:::

### **815.804-70 Preproduction and start-up and other nonrecurring costs.**

In evaluating start-up and other nonrecurring costs, the extent to which these costs are included in the proposed price and the intent to absorb or recover any such costs in any future noncompetitive procurement or other pricing action will be determined. The contracting officer will ascertain, with the assistance of the Assistant Inspector General for Policy, Planning and Resources (53), as required or considered necessary, that payment of such costs is not duplicated. For example, cost of equipment paid for by the Government through a setup or connection agreement will not be included in depreciation cost of a subsequently negotiated agreement.

### **815.805-4 Technical analysis.**

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into and ensuring that all legal and technical reviews are accomplished. To this end, initial and revised pricing of all negotiated prime contracts (including subcontract pricing under them) and contract modifications will be subject to technical analyses to the degree the contracting officer deems necessary (see 801.602-70 for required legal reviews). Technical analyses of the proposals will be requested by the contracting officer from the appropriate technical personnel to address, as a minimum, the items set forth in FAR subpart 15.805-4. Contracting officers shall not begin negotiation of or award any negotiated contracts or contract modifications before receipt, analysis and consideration of documented technical evaluations for every procurement action requiring such analysis under the conditions prescribed in FAR 15.805-4. The results of such analyses will be documented in the contract file and will also be made available to the auditor performing the preaward audit required by 815.805-5.

(b) When, in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Deputy Assistant Secretary for Acquisition and Materiel Management (95) for review and comment. When deemed advisable, the Deputy Assistant Secretary for Acquisition and Materiel Management (95) will request the General Counsel to accomplish a legal review. This review is in addition to the legal review specified in 801.602-70.

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**:::815.805-5 Field pricing support.**

(a) Contracting officers in the Office of Acquisition and Materiel Management, Office of Facilities, VA Marketing Center, and VA medical centers, are authorized to request audits direct from the cognizant audit offices, except that contracting officers in the VA medical centers will coordinate their requests with the Deputy Assistant Secretary for Acquisition and Materiel Management (90). Contracting officers in the VA Supply Depots will request audits through the VA Marketing Center. The requester will assure that a copy of the audit report is furnished to the Assistant Inspector General for Policy, Planning and Resources (53C) and that final negotiating action is not taken until authorization is received from the Assistant Inspector General for Policy, Planning and Resources (53C). All other current procedures for requesting audits will be followed.

(b) When cost or pricing data are required for proposals of less than \$500,000, and an audit is not required, the contracting officer will make a cost price analysis to evaluate the reasonableness of individual cost elements and to ensure that the overall price offered is fair and reasonable. The cost and price analysis techniques are stated in FAR 15.805-2 and 15.805-3. When circumstances warrant, a contracting officer may request an audit of a proposal less than \$500,000 in accordance with the procedures cited in paragraph (a) of this section, or request the Assistant Inspector General for Policy, Planning and Resources (53C) to provide the accounting assistance or technical advice deemed desirable.

(c) An audit should not be requested under any other following conditions:

(1) Information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price.

(2) Prices for a contract modification to a fixed-price contract entered into by sealed bidding have been established and written in the basic fixed-price contract.

(3) Negotiated fixed-price or cost-reimbursement utility connection or site facility agreements, developed by the Office of Facilities, representing contracts for the construction of service facilities or site clearance where cost data submitted (construction cost estimates) will be evaluated by design and cost engineering staffs of the Office of Facilities.

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(d) When using the exclusions in paragraph (c) of this section as a basis for not submitting cost and pricing data for preaward audit, contracting officers will fully justify the reasons for so doing and document such justification in the contract file.:::

**:::SUBPART 815.9 - PROFIT:::**

**:::815.901 General.**

If a profit or fee is involved, it must be established as a dollar amount and not as a percentage of the cost estimate, in order to avoid the cost-plus-a-percentage-of-cost system of contracting which is not legal (see FAR part 16). Once established, the profit or fee cannot be escalated during the period of the contract. However, when a change order materially affects the scope of the work, an additional profit or fee or an appropriate reduction may be negotiated.:::